

DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program

345 Burma Rd.
Oakland, CA 94607
(510) 286-0352, (510) 622-5165 fax



MCM CONSTRUCTION, INC.
6413 32ND STREET
NORTH HIGHLANDS, CA 95660

November 10, 2009

Contract No. 04-0120L4
04-Ala-80-1.6/2.7
Oakland Touchdown
SFOBB-ESSSP

Attn: Mr. Greg Allen
Project Manager

Letter No. 05.03.01-001718

Subject: Response to NOPC No. 10

MCM-TRN-000853R00, MCM-TRN-000883R00

Dear Mr. Allen,

After further review of MCM's Initial NOPC #10 dated 04/08/09, and MCM's response to State letter 1474, the issue addressed on this NOPC #10 pertains to Assembly Bill 3, which provides for a 1% temporary increase in the statewide sales and use tax, it has been determined that the Department does not have the authority to decide on this dispute.

Further, this issue applies to another Department of the State of California that is responsible for tax collection, the California Board of Equalization, and is external to the contract. The dispute presented via NOPC # 10 did not arise from performance of the contract MCM has with the Department, but rather as a result of the independent governmental action of a sovereign act, the legislature of the State of California.

Please reference Sections 7-1.01, "Laws to be Observed", Section 7-1.03, "Payment of Taxes", and Section 9-1.02, "Scope of Payment", of the Standard Specifications.

Standard Specifications Sections 9-1.02, "Scope of Payment", and 7-1.03, "Payment of Taxes", state that full compensation to the Contractor for all taxes is included in the contract prices. The Department has no contractual authority to provide additional compensation regardless of the impacts AB3 may have on the project costs. Increased sales and use tax costs do not constitute a change in the contract provisions.

Additionally, section 7-1.01, "Laws to be Observed" of the Standard Specifications states that the Contractor shall keep fully informed of all existing and future state and federal laws as well as county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work.

If you wish to pursue the matter further, your attention is directed to the provisions of Section 4-1.03A, "Procedure and Protest", as well as Section 9-1.04, "Notice of Potential Claim" of the Standard Specifications, for the specified dispute procedures. Should MCM wish to schedule a DRB hearing, the formal DRB process will be followed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ben Ghafghazi", with a long horizontal flourish extending to the right.

Ben Ghafghazi
Resident Engineer

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